

ROGER DAVIS,)	
)	
Petitioner,)	2:10-cv-02116-GMN-LRL
)	
vs.)	
)	ORDER
BRIAN WILLIAMS, <i>et al.</i> ,)	
)	
Respondents.)	
	/	

The time permitted for petitioner to inform the court of his decision as to the unexhausted claims has long since expired and petitioner has not responded to the Court's order as directed. As a result, the Court must dismiss the mixed petition as required by the holding of *See Rose v. Lundy*, 455 U.S. 509, 521-22 (1982).

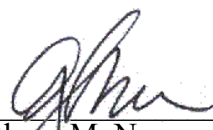
Should petitioner wish to appeal this decision, he must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are debatable among jurists of reason; that a court could resolve the issues differently; or that the questions are adequate to deserve encouragement to proceed further. *Id.*

Pursuant to the December 1, 2009 amendment to Rule 11 of the Rules Governing Section 2254 and 2255 Cases, district courts are required to rule on the certificate of appealability in the order disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal and request for certificate of appealability to be filed. Rule 11(a). This Court has considered the issues raised by petitioner, with respect to whether they satisfy the standard for issuance of a certificate of appealability, and determines that none meet that standard. The Court will therefore deny petitioner a certificate of appealability.

IT IS THEREFORE ORDERED that the petition is **DISMISSED WITH PREJUDICE**. No Certificate of Appealability is warranted and none shall issue.

The Clerk shall enter judgement accordingly.

Dated this 19th of July, 2011



Gloria M. Navarro
United States District Judge